

### Remarks

This response to the Official Action is being made in the manner of Examiner reopening prosecution after appeal, as it appears that the notice of appeal and the most recent action crossed in the mail. Applicants reserve the right to re notice the appeal.

Applicant's attorney and Examiner discussed the independent claims in a telephonic conference of September 14, 2006. Examiner felt that the term "simulating operation" in the preamble of the independent claims did not correspond to the "calculating at least one production quantity" language used in the body of the claims. Applicant's attorney discussed the fact that calculating at least one production quantity was a typical simulation activity. However, no agreement was reached.

On October 4, 2006, Applicant's attorney contacted Examiner after reviewing the Official Action and determining how close Examiner and Applicants were in potentially coming to an agreement on an allowable set of claims. The claim amendment being made was discussed, and Examiner agreed that the claims were potentially allowable, subject to review by Examiner's supervisor.

An advisory action was received indicating that the claims were not allowable for 101 reasons. Without arguing that point, the current amendment is a practical attempt to conform the body of the claims to the simulation language in the preamble, which was the original desire of Examiner, in order to expeditiously bring the case into a condition that everyone agrees is allowable.

The claims as filed noted that the steps involved were a method for simulating operation of a production system, thus this amendment is not adding anything to the claims, nor changing their intended scope, but is just tying the preamble language to the calculating step in an attempt to satisfy Examiner's concerns and in a manner that is sure to eliminate 101 concerns. Simulation of a production system is an application that is well known for being useful, and that utility is now firmly in the body of the claim, so Applicants trust that this amendment removes any uncertainty as to the utility of the claims. No search is required because the scope of the claims is clearly unchanged: the claims have always been specified as being for the purpose of simulating operation of a production system.

In the telephonic conference of October 4, 2006, Examiner also raised an additional issue regarding whether the language "set of at least one tool" was supported in the specification. It was determined that, at a minimum, "one tool" would support the claim language and that one tool had been disclosed. Upon further examination, the specification explicitly notes that a tool group has one or more tools, which also supports the claim language. (The summary of invention begins "A method and apparatus accepts parameters of one or more *groups of one or more tools* in a production system, including a parameter related to the downtime of any controlling system, such as the percentage of time the controlling system is down." emphasis added). Thus, support exists for the claim language.

The claims are in condition for allowance. Favorable action is solicited.

Respectfully submitted,

November 15, 2006

By: 

Charles E. Gottlieb

Registration No. 38,164

Innovation Partners

540 University Ave., Suite 300

Palo Alto, CA 94301

(650) 328-0100